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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/518,233

07/29/2005

Trevor Graham Blease

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EXAMINER

METZMAIER, DANIEL S

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

06/27/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/518,233	<b>Applicant(s)</b> BLEASE, TREVOR GRAHAM	
	<b>Examiner</b> Daniel S. Metzmaier	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02/16/2004 & 07/29/2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-18 are pending.

#### ***Priority***

1. Receipt is acknowledged of papers received in this national stage application from the International Bureau (PCT Rule 17.2(a)), submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6, 8, 9, 10, 12, and 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims employ improper alternative groupings by the open language "is or include" and the multiple use of "and" and "or". The transitional phrases "includes" or "including" are synonymous to "comprises" and "comprising". See MPEP 2111.03 and 2173.05(h).

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 8 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kain et al, US 5,100,438. Kain et al (abstract; column 2, lines 10 et seq; examples and

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claims) disclose coal slurries employing as dispersing agents the reaction of lower C<sub>1-4</sub> alkyl capped polyethylene glycol (PEG) or PEG amines. Claims 5 and 14 have been included since the Kain et al reference employs low sulfur West Virginia bituminous coal, which would clearly include some dirt and/or soil. The claims are devoid of any limitations based on concentrations. Furthermore, the dispersing materials themselves are detergents.

6. Claims 1-3, 5, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Stühler et al, US 4,853,430. Stühler et al (abstract; column 1, lines 50 et seq; examples and claims) disclose polyesters of dimer acids and polyalkylene glycol including polyethylene glycol. Said polyesters are disclosed as rheological agents having utility in cosmetic, pharmaceutical and industrial products. Said products include hair care and skin care products as well as cosmetic and industrial cleaning products. Claims 5 and 14 are included in this rejection since the products would disperse soil and/or dirt solids as cleaning products. The sulfates are considered builders.

7. Claims 1-3, 5, 8 and 10-12 rejected under 35 U.S.C. 102(b) as being anticipated by Kelly et al, US 4,075,318. See Table I, bridging columns 14, 15 and 16. Lotion A comprises talc and an ester of polyethylene glycol 400 and dimer acid.

8. Claims 1, 5-6, 8 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Zirnstien et al, US 6,365,637. Zirnstien et al (abstract; column 2, lines 1 et seq; column 9, line 18 et seq; examples 12 and 13; and claims) disclose ester and amides comprising polyethylene glycol and dimer acids as solubilizing agents for cosmetics and pharmaceuticals including fungicides. Fungicides are deemed to read

on applicants' claims 16-18 to pesticides and agrochemically active materials. The Zirnstein et al solubilizing agents read on claim 1 and are taught as useful in dispersing insoluble materials including dyes and fungicides.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 6-7, 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stühler et al, US 4,853,430, in view of Peters et al, US 5,260,052.

Stühler et al (abstract; column 1, lines 50 et seq; examples and claims) disclose polyesters of dimer acids and polyalkylene glycol including polyethylene glycol. Said polyesters are disclosed as rheological agents having utility in cosmetic, pharmaceutical and industrial products. Said products include hair care and skin care products as well as cosmetic and industrial cleaning products.

Stühler et al differs from the claims in compositions employing titanium dioxide pigment.

Peters et al (column 1, lines 52 et seq) teaches the treatment of pigments with polyesters comprising as part of the polyester, (column 6, lines 29 et seq, particularly lines 59-65) polyethylene glycols for the advantage of improving the dispersability of the pigments. Peters et al (column 1, lines 15 and examples) discloses titanium dioxide as suitable pigments.

These references are combinable because they teach rheological agents and materials employing said agents. It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ the polyesters of Stühler et al in the titanium dioxide compositions of Peters et al for the advantage of improving the dispersibility of the particles taught in the Peters et al and for the advantageous improved rheology rendering particles more dispersible and mitigating settling.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Staker et al, US 4,715,866, and Ljusberg-Wahren, US 4,634,450, cited in the international search report are deemed to be cumulative to the Kane et al, 5,100,438, reference relied on above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David W. Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Daniel S. Metzmaier/  
Primary Examiner, Art Unit 1796**

DSM